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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

US CAPITAL/NOBLE CAPITAL TEXAS  
REAL ESTATE INCOME FUND, LP,

Plaintiff,

v.

JADON NEWMAN, et al.,

Defendants.

Case No. 1:22-CV-652-DAE

**PLANTIFF'S MOTION FOR ENTRY OF  
CLERK'S DEFAULT  
AGAINST DEFENDANT, NOBLE  
CAPITAL FUND MANAGEMENT, LLC  
ON COUNT TWELVE OF SECOND  
AMENDED COMPLAINT**

Plaintiff, US CAPITAL/NOBLE CAPITAL TEXAS REAL ESTATE INCOME FUND, LP (the "Fund"), by and through the undersigned counsel and pursuant to Rule 55(a)&(b)(1) of the Federal Rules of Civil Procedure, hereby files and serves this Motion for Entry of Clerk's Default Judgment against Defendant, Noble Capital Fund Management, LLC. ("NCFM"), on Count Twelve of Second Amended Complaint.

1. On January 31, 2024, the Magistrate Judge recommended that NCFM's motion to dismiss Count Twelve of Plaintiff's Second Amended Complaint be denied. [Dkt #24 ]. NCFM filed objections to the recommendation [Dkt#25]. On March 7, 2024, the District Court denied NCFM's objection, thereby denying NCFM's motion to dismiss Count Twelve of the Second Amended Complaint for breach of contract against NCFM. [Dkt# 27 at pgs.17-18 & 21-22].

2. Rule 12(a)(4)(a), Fed. R. Civ. Pro., afforded NCFM 14 days after the District Court's Order in which file a pleading in response to Count Twelve. That deadline was

1 March 21, 2024, and NCFM has filed nothing, nor sought an extension of time. Therefore,  
2 NCFM is in default.

3 3. Count Twelve of the Plaintiff's Second Amended Complaint is for "Breach of  
4 Contract" against Noble Capital Fund Management, LLC, as NCFM breached the parties'  
5 Master Advisory Services Agreement by stealing Fund assets. The amount of damages  
6 caused by the breach is \$24,472,000.00, an amount certain, as evidenced by the attached  
7 affidavit.  
8

9 WHEREFORE, the Plaintiff requests the Clerk to enter a default judgment against  
10 Noble Capital Fund Management, LLC, on Count Twelve of the Plaintiff's Second  
11 Amended Complaint for breach of contract in the amount of \$24,472,000.00, plus interest  
12 and costs, with jurisdiction maintained for the determination of costs, including attorney's  
13 fees upon timely application.  
14

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17 Respectfully submitted,  
18 SHEEHY, WARE, PAPPAS & GRUBBS,  
P.C.

19 By: /s/ Joseph A. Garnett  
20 Joseph A. Garnett  
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25 **ATTORNEY FOR PLAINTIFF**  
26 **NOBLE CAPITAL TEXAS REAL ESTATE**  
27 **INCOME FUND LP**  
28

**CERTIFICATE OF SERVICE**

I certify that this document was served on all counsel of record via the Court's CM/ECF system on April 4, 2024.

/s/ Joseph A. Garnett  
Joseph A. Garnett